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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	FCC 94-145
	)	
Equal Access and Interconnection	)	
Obligations Pertaining to	)	
Commercial Mobile Radio Services	)	CC Docket No. 94-54
	)	

To: The Commission

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

RURAL CELLULAR ASSOCIATION

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TABLE OF CONTENTS

SUMMARY

The RCA is an association comprised of small cellular operators who provide cellular service to rural America. RCA member companies will be affected adversely by the adoption of rules that impose mandatory equal access and interconnection obligations. RCA does not believe that equal access should be applied to CMRS licensees, including cellular licensees in light of changing market conditions and pending legislation designed to lift these restrictions on the RBOCs. Imposition of equal access obligations on small rural carriers would be especially onerous. RCA, therefore, believes that small rural cellular carriers should be exempt from equal access obligations should they be imposed.

RCA advocates the retention of negotiated interconnection arrangements between LECs and CMRS providers in lieu of the Commission's alternative proposal to federally tariff interconnection arrangements. While RCA does not object to voluntary provision of such interconnection by CMRS providers, RCA is opposed to the adoption of any rules mandating such arrangements.

RCA is adamantly opposed to any regulation that would permit cellular resellers to put in a switch and obtain interconnection from a cellular licensee. To allow such interconnection would be to elevate a cellular reseller to the status of a cellular licensee in terms of its ability to provide full service to their customers, but without the regulatory constraints imposed on the cellular licensee. Additionally, RCA opposes regulation that would subject cellular carriers to regulations that would require them to allow facilities-based CMRS providers to resell their services.

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COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"), by its attorney and pursuant to Section 1.415 of the Commission's Rules, submits the following comments in response to the Notice of Proposed Rule Making and Notice of Inquiry ("NPRM") in the above-captioned proceeding released by the Federal Communications Commission ("FCC" or "Commission") on July 1, 1994.[1]

I. STATEMENT OF INTEREST

The RCA is an association comprised of small cellular operators providing service to rural America. RCA's members serve over eighty licensed areas across the country encompassing approximately 6.5 million people. The majority of the area served by RCA member companies is rural in nature. RCA member companies are affiliated with Local Exchange Carriers ("LECs"). In the NPRM, the Commission tentatively concluded that it should impose

[1] Comments in this proceeding were originally due August 30, 1994. On August 11, 1994, the Commission adopted an Order extending the comment deadline to September 12, 1994 and the reply deadline to October 13, 1994.

equal access obligations on cellular carriers.[2] The Commission also seeks to determine whether it should require LECs to offer interconnection to CMRS providers pursuant to a federal tariff[3] and whether it should require interconnection among CMRS providers.[4] RCA member companies will be affected adversely by any decision to impose equal access and interconnection obligations on cellular carriers. Accordingly, RCA has a vested interest in the outcome of this proceeding.

II. BACKGROUND

Historically, rural telephone companies have been the only providers of telecommunications services in rural areas. Larger companies have chosen not to provide telephone service to these less profitable communities. The commitment these telephone companies have made to provide their subscribers with new telecommunications services is readily demonstrated by their quick roll-out of cellular services in the rural markets.

In 1988, the Commission began issuing construction permits for Rural Service Areas ("RSAs"). The five-year fill-in periods for completing construction in the RSAs have only recently started to expire. In most cases, RSAs have been built out completely or as near to completion as possible given terrain conditions that would prohibit full buildout. RCA anticipates that by the end of 1996,

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[2] NPRM at para. 3.

[3] NPRM at para. 4.

[4] NPRM at para. 5.

nationwide seamless cellular service will be a reality.

RCA submits that independent rural cellular carriers possess a commitment to serving their subscribers that is unmatched by the larger cellular carriers. The rural cellular carriers have contributed a great deal to the expedient delivery of cellular service in rural areas. Rural cellular carriers have been most notably successful in their endeavors because they provide the types of services their customers desire: wide-area toll-free calling areas, high-quality signals that prevent dropped calls, the ability to roam easily on other systems, and reasonable total monthly bills. Of these, wide area toll-free calling is of the utmost concern to rural customers who tend to travel over greater distances than their metropolitan counterparts. As is discussed more fully below, mandatory imposition of equal access on rural cellular carriers will eliminate the ability of the rural cellular carrier to give their customers what they desire.

III. DISCUSSION

A. Equal access should not be imposed on any CMRS provider, including cellular carriers.

RCA believes that equal access obligations should not be mandatorily imposed upon cellular licensees and other CMRS providers. RCA respectfully submits that the Commission's tentative conclusion that equal access obligations should be imposed on cellular carriers is based on a stale record that does not reflect the current dynamics of the CMRS marketplace. The advent of Personal Communications Services ("PCS"), pending

legislation designed to lift some of the MFJ restrictions on the Regional Bell Operating Companies ("RBOCs") and "mergermania" between CMRS providers and other telecommunications providers will vastly affect the CMRS marketplace, including the provisioning of cellular services.

1. **It would be imprudent on the part of the Commission to impose equal access on cellular carriers in light of changing market conditions.**

Three of the FCC's commissioners, in separate statements included in this NPRM, have questioned the wisdom of imposing equal access obligations on cellular carriers in light of the changing marketplace and have also questioned whether the record truly reflects the state of the marketplace. Specifically, Commissioner Quello has concluded that before imposing regulatory structures borne of the MFJ, the Commission should be asking "how a competitive market for mobile communications will allow [the FCC] to remove regulatory impediments rather than grafting regulatory stop-gap measures upon a family of services yet to be developed and offered by competitors to the public."[5] Commissioner Chong has also questioned the basis for the Commission's tentative conclusion to impose equal access obligations on cellular carriers noting that new services and competitors will soon enter the CMRS marketplace potentially creating new forms of competition.[6] New CMRS providers means that IXCs will have an expanded opportunity to partner with SMR providers, PCS providers as well as the existing cellular

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[5] See Statement of Commissioner James H. Quello.

[6] See Statement of Commissioner Chong.

providers to create competitive telecommunications services. RCA believes that forced regulatory measures at this juncture would only serve to impede competition in both the CMRS and IXC markets.

Commissioner Barrett has noted that the rationale for imposing equal access obligations in the context of "bottleneck facility" market power is not applicable to cellular carriers because cellular carriers do not control bottleneck facilities.[7] Commissioner Barrett stated that his "goal in this area, is not to impose more regulation on non-BOC entities, in order to ensure that the cost and the burden of MFJ restrictions are applied across the board in the CMRS area."[8] RBOC affiliated cellular carriers are only subject to equal access requirements because of the MFJ restrictions. Given the competition in the cellular marketplace, and the anticipated merger between McCaw Cellular and AT&T, it is RCA's position that the MFJ restrictions as they relate to the RBOC's should be re-examined. Unfortunately, the Commission does not have jurisdiction over this issue and it is up to the Congress and the MFJ Court to remedy this situation. Just because the RBOCs are subjected to these requirements does not mean that other cellular carriers should be subjected to them. The RBOCs' "misery loves company" attitude should not be countenanced at this time, especially now that Congress is considering legislation that could

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[7] The U.S. District Court for the District of Columbia most recently noted this fact when it consented to a waiver to allow McCaw Cellular Communications, Inc. to merge with AT&T. See United States v. Western Elec. Co., C.A. No. 82-0192, at pp. 17-18 (D.D.C. August 25, 1994).

[8] See Separate Statement of Commissioner Andrew Barrett.

remove these restrictions.

Despite these commissioners' willingness to allow the marketplace to determine the future, the Commission stated that as a general matter it believes that "equal access obligations are in the public interest because equal access would increase competition in the interexchange and mobile services marketplace, and also foster regulatory parity among wireline and wireless services." NPRM at para. 3. As a preliminary matter, RCA notes that Congress only mandated regulatory parity among CMRS providers. There is no requirement in the Budget Reconciliation Act of 1993 to establish regulatory parity among wireline and wireless services. That aside, RCA believes that the Commission's misguided attempt to impose equal access obligations on all cellular carriers will not serve the public interest. In contrast, the imposition of equal access obligations on cellular carriers will disserve the public interest by causing cellular carriers to incur unnecessary costs that will not benefit their cellular subscribers and will ultimately be borne by their customers.

2. The costs associated with the implementation of equal access far outweigh any public interest benefit.

In order to implement equal access, cellular carriers will be forced to allocate significant sums of money for the upgrading of their networks. In order to route traffic to a customer's preferred IXC under equal access, most RCA member companies will be required to modify the software and/or hardware in their switches in excess of $500,000 per switch and some companies may also have to replace their switches at a greater cost. There are other costs

as well.[9] These additional costs include costs associated with customer education and administration of equal access. Some cellular carriers may also have to undergo additional expense if an upgrade of the type of interconnection is required in order to implement equal access.

Why must cellular carriers (and, ultimately, their subscribers) bear these costs? So that MCI, AT&T and Sprint can have access to a comparatively small group of cellular customers. Unlike landline penetration which hovers at roughly 97% of all households, cellular penetration is only about 5-7% of the population ("POPs") throughout the country. The majority of these POPs are served by RBOC-affiliated cellular carriers which are providing equal access by virtue of MFJ imposed restrictions. Additionally, the proposed McCaw Cellular/AT&T merger will subject the largest non-RBOC cellular carrier to the same equal access requirements as the RBOCs. Therefore, mandatory equal access imposed by the FCC would have the greatest adverse affect only on smaller cellular carriers. RCA believes that the relatively low penetration level of small cellular carriers and the high costs associated with imposing equal access simply do not justify the mandatory imposition of equal access on small cellular carriers. Accordingly, in the event equal access obligations are imposed on

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[9] RCA notes that this only covers the costs associated with providing Feature Group D equal access and does not include costs associated with additional capabilities such as Billed Party Preference, SS7, out of band signalling trunk (i.e., Integrated Services Digital Network Users Part (ISUP)) and other Line Information Database Services which, for technical reasons, are currently not available.

cellular carriers, RCA believes that the Commission should exempt small cellular carriers from any such equal access requirements.

3. **Mandatory equal access will not promote competition.**

RCA member companies have investigated the rates charged by the larger IXCs, but have simply not found these rates to be consistently competitive. Due to the marketing power of the major IXCs, customers under equal access are likely to unwittingly select a more expensive carrier for their long distance traffic. In many cases, smaller long distance carriers have been able to provide more competitive service offerings than the larger IXCs. With the advent of equal access, cellular customers could lose the benefits they currently enjoy through the aggregation of large traffic volumes delivered to a single designated IXC. For example, if the cellular carriers are forced to disaggregate long distance services among several IXCs, the cellular customers will lose the benefit of toll aggregation when they select an IXC with rates higher than the single designated carrier.

Rural cellular providers are currently able to purchase the long distance portion of the call in bulk and pass the discount on to their customers. In many cases, rural cellular carriers do not even charge their customers for the long distance portion of the call. If equal access is imposed and the calls are required to be handed off to different IXCs, the cellular customer will end up paying more for the same service. RCA, therefore, believes that implementation of mandatory equal access will not benefit consumers and could instead subject consumers to higher monthly phone bills.

B. RCA supports the retention of negotiated interconnection agreements, provided certain safeguards are adopted.

RCA advocates the retention of negotiated interconnection arrangements between LECs and CMRS providers as long as the safeguards set forth in the Commission's NPRM are adopted. These safeguards include making the interconnection agreements accessible to the public and requiring the inclusion of a "most favored nation" clause in all interconnection agreements entered into after the adoption of the Commission's Order in this proceeding. RCA believes that these privately negotiated agreements will give CMRS providers and LECs greater flexibility in adopting their networks to meeting consumer demands than would a federally imposed tariff. The safeguards suggested by the Commission will ensure that CMRS providers are not discriminated against because they will have information readily available to evaluate the rates, terms and conditions imposed by the LECs.

C. RCA opposes the adoption of rules that would require CMRS providers to provide interstate interconnection to other CMRS providers.

In its Notice of Inquiry, the Commission asked for comment on whether it should mandate the provision of interstate interconnection by CMRS providers to other CMRS providers. Although RCA does not object to voluntary provision of such interconnection by CMRS providers, it is opposed to the adoption of any rules mandating such arrangements. Much of the CMRS marketplace is in its infancy, and is expected to change and develop rapidly over the next several years. Indeed, PCS, which is

potentially the most significant development in the use of communications technology, has yet to even be licensed. It would, therefore, be premature to consider imposing mandatory interconnection obligations on CMRS providers at this time.

Due to the nascent, or, in some cases, prenascent state of many CMRS services, interconnection may not even be technologically, much less economically, feasible at this time. Interconnection may also be illogical with respect to networks that provide different capabilities (i.e., interconnection of voice and data services). Finally, adopting interconnection requirements at this time could also entrench technical parameters for that interconnection before the technology has had sufficient time to develop.

D. RCA opposes any requirement that mandates the provision of interconnection by cellular carriers to cellular resellers.

In paragraph 128 of the NOI, the Commission invited comment on whether any interconnection obligations it adopts for CMRS providers should apply to CMRS resellers that use their own switches. The real issue, however, is whether cellular carriers should be required to provide interconnection to facilities-based cellular resellers. RCA is adamantly opposed to any regulation that would permit cellular resellers to put in a switch and obtain interconnection from a cellular licensee. To allow such interconnection would be to elevate a cellular reseller to the status of a cellular licensee in terms of its ability to provide full service to their customers, but without the regulatory

constraints imposed on the licensee. Not only would such a regulation afford resellers with an unfair competitive advantage, but it would also not subject resellers to any of the public interest obligations the Commission imposes on cellular licensees. Clearly, allowing cellular resellers to obtain this status without any public interest obligations would be violative of the Communications Act. Accordingly, RCA believes that mandatory interconnection among cellular resellers and CMRS providers should not be imposed.

E. Cellular carriers should not be required to resell their services to facilities-based CMRS competitors.

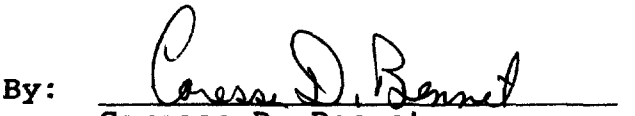
RCA believes that cellular carriers should not be required to resell its services to facilities-based CMRS competitors who hold their own licenses. Cellular carriers have placed a significant investment in the construction of their facilities and are still in the process of recovering the costs on their investment. In addition, many cellular carriers have reached a point where they need to expend considerable amounts to upgrade and improve their cellular systems in order to compete with new technologies such as PCS and enhanced SMR. Allowing these new CMRS technologies to "piggyback" on the cellular carriers not only deters competition, but forces the cellular licensee to give up capacity that will be used at a later date. RCA, therefore, opposes regulation that would subject cellular carriers to regulations that would require them to allow facilities-based CMRS providers to resell their services.

IV. CONCLUSION

As discussed above, RCA does not believe that equal access and interconnection obligations should be adopted for CMRS providers, including cellular carriers at this time. If such obligations are adopted, RCA respectfully submits that recognition of the unique circumstances surrounding the provision of radio-based services provided to rural America by rural cellular carriers should guide the Commission to a finding that equal access and interconnection obligations should not be applied to rural cellular carriers. Such a finding is consistent with the public interest, convenience and necessity.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

By: 

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